

**R590. Insurance, Administration.**

**R590-222. Viatical Settlements. (Effective 8-4-08)**

**R590-222-1. Authority.**

This rule is promulgated by the insurance commissioner pursuant to the authority provided in Subsection 31A-2-201(3), authorizing rules to implement the provisions of Title 31A, and Section 31A-36-119, authorizing rules to implement the provisions of Title 31A, Chapter 36.

**R590-222-2. Purpose and Scope.**

The purpose of this rule is to implement procedures for licensure of viatical settlement providers and producers, provider annual reports, disclosures, advertising, reporting of fraud, prohibited practices, standards for viatical settlement payments, and procedures for requests for verification of coverage.

This rule applies to all viatical settlement providers and producers and to insurers whose policies are being viaticated.

**R590-222-3. Incorporation by Reference.**

The following appendices are hereby incorporated by reference within this rule and are available at <http://www.insurance.utah.gov/ruleindex.html>:

(1) Appendix A, Utah Viatical Settlement Provider Application, dated 2007.

(2) Appendix B, Utah Viatical Settlement Provider Annual Report, dated 2007.

(3) Appendix C, NAIC Viatical Settlement brochure Selling Your Life Insurance Policy, dated 2004.

(5) Appendix D, NAIC Verification of Coverage for Life Insurance Policies, dated 2004.

**R590-222-4. Definitions.**

In addition to the definitions in Section 31A-1-301 and 31A-36-102, the following definitions apply to this rule:

(1) For purposes of this rule, "insured" means the person covered under the policy being considered for viatication.

(2) "Life expectancy" means the mean number of months the individual insured under the life insurance policy to be viaticated can be expected to live as determined by the viatical settlement provider considering medical records and appropriate experiential data.

(3) "Patient identifying information" means an insured's address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, social security number, or any other information that is likely to lead to the identification of the insured.

**R590-222-5. License Requirements.**

(1) Viatical Settlement Provider-License.

(a) A person may not perform, or advertise any service as a viatical settlement provider in Utah, without a valid license.

(b) A viatical settlement provider license shall be issued on an annual basis upon:

(i) the submission of a complete initial or renewal application; and

(ii) the payment of the applicable fees under Section 31A-3-103.

(c) An applicant for a license shall:

(i) use the application form prescribed by the commissioner and available on the department's website, see Appendix A;

(ii) provide a copy of the applicant's plan of operation that is to:

(A) describe the market the applicant intends to target;

(B) explain who will produce business for the applicant and how these people will be recruited, trained, and compensated;

(C) estimate the applicant's projected Utah business over the next 5 years;

(D) describe the corporate organizational structure of the applicant, its parent company, and all affiliates;

(E) describe the procedures used by the applicant to insure that viatical settlement proceeds will be sent to the viator within three business days as required by Subsection 31A-36-110 (3); and

(F) describe the procedures used by the applicant to insure that the identity, financial information, and medical information of an insured are not disclosed except as authorized under Section 31A-36-106;

(iii) provide the antifraud plan as required by Section 31A-36-117;

(iv) provide any other information requested by the commissioner; and

(v) provide evidence of financial responsibility in the amount of \$50,000 in the form of a surety bond issued by an authorized corporate surety or a deposit of cash, certificates of deposit or securities or any combination thereof:

(A) The evidence of financial responsibility shall remain in force for as long as the licensee is active.

(B) The bond, deposit or combination thereof, shall not be terminated without 30 days prior written notice to the licensee and the commissioner.

(C) The commissioner may accept as evidence of financial responsibility, proof that a financial instrument, in accordance with the requirements in subsection 1(c)(v), has been filed with the commissioner of any other state where the viatical settlement provider is licensed as a viatical settlement provider.

(d) The commissioner may refuse to issue or renew a license of a viatical settlement provider if any officer, one who is a holder of more than 10% of the provider's stock, partner, or director fails to meet the standards of Title 31A, Chapter 36.

(e) If a viatical settlement provider fails to pay the renewal fee within the time prescribed or fails to submit the reports required in Section R590-222-6, the nonpayment or failure to submit the required reports shall:

(i) result in lapse of the license; and

(ii) subject the provider to administrative penalties and forfeitures.

(f) If a viatical settlement provider has, at the time of

license renewal, viatical settlements where the insured has not died, the viatical settlement provider shall:

(i) renew or maintain its current license status until the earlier of the following events:

(A) the date the viatical settlement provider properly assigns, sells, or otherwise transfers the viatical settlements where the insured has not died; or

(B) the date that the last insured covered by viatical settlement transaction has died;

(ii) designate, in writing, either the viatical settlement provider that entered into the viatical settlement or the producer who received commission from the viatical settlement, if applicable, or any other viatical settlement provider or producer licensed in this state, to make all inquiries to the viator, or the viator's designee, regarding health status of the insured or any other matters.

(g) The commissioner shall not issue a license to a nonresident viatical settlement provider unless a written designation of an agent for service of process is filed and maintained with the commissioner.

(2) Viatical Settlement Producer license.

Viatical settlement producers shall be licensed in accordance with Title 31A, Chapter 23a with a life insurance line of authority.

#### **R590-222-6. Annual Report.**

(1) By March 1 of each calendar year, each viatical settlement provider licensed in this state shall submit a report to the commissioner. Such report shall be limited to all viatical settlement transactions where the viator is a resident of this state.

(2) This report shall be submitted in the format in Appendix B and contain the following information for the previous calendar year for each viatical settlement contracted during the reporting period:

- (a) a coded identifier;
- (b) policy issue date;
- (c) date of the viatical settlement;
- (d) net death benefit viaticated;
- (e) amount available to the policyholder under the terms of the policy at the time of the settlement; and
- (f) net amount paid to viator.

#### **R590-222-7. Payment Requirements.**

(1) Payment of the proceeds of a viatical settlement pursuant to Subsection 31A-36-110(3) shall be by means of wire transfer to an account designated by the viator or by certified check or cashier's check.

(2) Payment of the proceeds to the viator pursuant to a viatical settlement shall be made in a lump sum except where the viatical settlement provider has purchased an annuity or similar financial instrument issued by a licensed insurance insurer or bank, or an affiliate of either. Retention of a portion of the proceeds, not disclosed or described in the viatical settlement by

the viatical settlement provider or escrow agent, is not permissible without written consent of the viator.

**R590-222-8. Disclosures.**

(1) As required by Subsection 31A-36-108(1), the disclosure, which is to be provided no later than the time the application for the viatical settlement, shall be provided in a separate document that is signed by the viator and the viatical settlement provider or producer, and shall contain the following information:

(a) There are possible alternatives to a viatical settlement, including any accelerated death benefits or policy loans offered under the viator's life insurance policy.

(b) Some or all of the proceeds of the viatical settlement may be taxable under federal income tax and state franchise and income taxes, and assistance should be sought from a professional tax advisor.

(c) Proceeds of the viatical settlement could be subject to the claims of creditors.

(d) Receipt of the proceeds of a viatical settlement may adversely affect the viator's eligibility for Medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies.

(e) The viator has the right to terminate a viatical settlement within 15 calendar days after the receipt of the viatical settlement proceeds by the viator as provided by Subsection 31A-36-109(7). If the insured dies during the 15 day period, the settlement is terminated, subject to repayment of all viatical settlement proceeds and any premiums, loans and loan interest to the viatical settlement provider or purchaser.

(f) Funds will be sent to the viator within three business days after the viatical settlement provider has received the insurer or group administrator's acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated.

(g) Entering into a viatical settlement may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the viator. Assistance should be sought from a financial adviser.

(h) Disclosure to a viator shall include distribution of a copy of the National Association of Insurance Commissioners (NAIC) Viatical Settlement brochure, dated 2004, that describes the process of viatical settlements, see Appendix C.

(i) The disclosure document shall contain the following language: "All medical, financial or personal information solicited or obtained by a viatical settlement provider or producer about an insured, including the insured's identity or the identity of family members, a spouse or a significant other may be disclosed as necessary to effect the viatical settlement between the viator and the viatical settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years."

(j) The insured may be contacted by either the viatical settlement provider or producer or its authorized representative for the purpose of determining the insured's health status. This contact is limited to once every three months if the insured has a life expectancy of more than one year, and no more than once per month if the insured has a life expectancy of one year or less.

(2) A viatical settlement provider shall provide the viator with at least the following disclosures no later than the date the viatical settlement is signed by all parties. The disclosures shall be conspicuously displayed in the viatical settlement or in a separate document signed by the viator and the viatical settlement provider or producer, and provide the following information:

(a) The affiliation, if any, between the viatical settlement provider and the issuer of the insurance policy to be viaticated.

(b) The document shall include the name, business address and telephone number of the viatical settlement provider.

(c) A viatical settlement producer shall disclose to a prospective viator the existence and source of the producer's compensation. The term "compensation" includes anything of value paid or given to a viatical settlement producer for the placement of a policy.

(d) If an insurance policy to be viaticated has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be viaticated, the viator shall be informed of the possible loss of coverage on the other lives under the policy and shall be advised to consult with his or her insurance producer or the insurer issuing the policy for advice on the proposed viatical settlement.

(e) State the dollar amount of the current death benefit payable to the viatical settlement provider under the policy or certificate. If known, the viatical settlement provider shall also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate and the interest in those benefits.

(f) State the name, business address, and telephone number of the independent third party escrow agent, and the fact that the viator or owner may inspect or receive copies of the relevant escrow or trust agreements or documents.

(3) If the viatical settlement provider transfers ownership or changes the beneficiary of the insurance policy, the provider shall communicate the change in ownership or beneficiary to the insured within 20 days after the change.

#### **R590-222-9. Standards for Evaluation of Reasonable Payments.**

The viatical settlement provider is responsible for assuring that the net proceeds from the viatical settlement exceed the benefits that are available at the time of the viatical settlement under the terms of the policy including cash surrender, long-term care, and accelerated death benefits.

#### **R590-222-10. Requests for Verification of Coverage.**

(1) Insurers, authorized to do business in this state, whose policies are being viaticated, shall respond to a request for verification of coverage from a viatical settlement provider or a producer within 30 calendar days of the date a request is received, subject to the following conditions:

(a) a current authorization consistent with applicable law, signed by the policyholder or certificate holder, accompanies the request;

(b) in the case of an individual policy, submission of a form substantially similar to the NAIC Verification of Coverage for Individual Life Insurance Policies, dated 2004, which has been completed by the viatical settlement provider or producer in accordance with the instructions on the form, see Appendix D;

(c) in the case of group insurance coverage:

(i) submission of a form substantially similar to the NAIC Verification of Coverage for Life Insurance Policies dated 2004, which has been completed by the viatical settlement provider or producer in accordance with the instructions on the form, see Appendix D; and

(ii) which has previously been referred to the group policyholder and completed to the extent the information is available to the group policyholder.

(2) An insurer whose policy is being viaticated may not charge a fee for responding to a request for information from a viatical settlement provider or producer in compliance with this rule in excess of any usual and customary charges to policyholders, certificate holders or insureds for similar services.

(3) The insurer whose policy is being viaticated shall send an acknowledgment of receipt of the request for verification of coverage to the policyholder or certificate holder and, where the policyholder or certificate holder is other than the insured, to the insured. The acknowledgment may contain a general description of any accelerated death benefit or similar benefit that is available under a provision of or rider to the life insurance contract.

#### **R590-222-11. Advertising.**

(1) This section shall apply to advertising of viatical settlements, related products, or services intended for dissemination in this state. Failure to comply with any provision of this section is determined to be a violation of Section 31A-36-112.

(2) The form and content of an advertisement of a viatical settlement shall be sufficiently complete and clear so as to avoid misleading or deceiving the reader, viewer, or listener. It shall not contain false or misleading information, including information that is false or misleading because it is incomplete.

(3) Information required to be disclosed shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

(4) An advertisement shall not omit material information or use words, phrases, statements, references or illustrations if the

omission or use has the capacity, tendency or effect of misleading or deceiving viators, as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax consequence.

(5) An advertisement shall not use the name or title of an insurer or an insurance policy unless the affected insurer has approved the advertisement.

(6) An advertisement shall not state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable or in any manner an incorrect or improper practice.

(7) The words "free," "no cost," "without cost," "no additional cost", "at no extra cost," or words of similar import shall not be used with respect to any benefit or service unless true. An advertisement may specify the charge for a benefit or a service or may state that a charge is included in the payment or use other appropriate language.

(8) Testimonials, appraisals or analysis used in advertisements must be genuine; represent the current opinion of the author; be applicable to the viatical settlement product or service advertised, if any; and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective viators as to the nature or scope of the testimonials, appraisal, analysis or endorsement. In using testimonials, appraisals or analysis, the viatical settlement licensee makes, as its own, all the statements contained therein, and the statements are subject to all the provisions of this section.

(a) If the individual making a testimonial, appraisal, analysis or an endorsement has a financial interest in the provider of viatical settlements or related entity as a stockholder, director, officer, employee or otherwise, or receives any benefit directly or indirectly other than required union scale wages, that fact shall be prominently disclosed in the advertisement.

(b) An advertisement shall not state or imply that a viatical settlement benefit or service has been approved or endorsed by a group of individuals, society, association or other organization unless that is the fact and unless any relationship between an organization and the viatical settlement licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled or managed by the viatical settlement licensee, or receives any payment or other consideration from the viatical settlement licensee for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.

(c) When an endorsement refers to benefits received under a viatical settlement, all pertinent information shall be retained for a period of five years after its use.

(9) An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.

(10) An advertisement shall not disparage insurers, viatical settlement providers, viatical settlement producers, viatical settlement investment agents, anyone who may recommend a viatical

settlement, insurance producers, policies, services or methods of marketing.

(11) The name of the viatical settlement licensee shall be clearly identified in all advertisements about the licensee or its viatical settlement, products or services, and if any specific viatical settlement is advertised, the viatical settlement shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name and administrative office address of the viatical settlement provider shall be shown on the application.

(12) An advertisement shall not use a trade name, group designation, name of the parent company of a viatical settlement licensee, name of a particular division of the viatical settlement licensee, service mark, slogan, symbol or other device or reference without disclosing the name of the viatical settlement licensee, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the viatical settlement licensee, or to create the impression that a company other than the viatical settlement licensee would have any responsibility for the financial obligation under a viatical settlement.

(13) An advertisement shall not use any combination of words, symbols or physical materials that by their content, phraseology, shape, color or other characteristics are so similar to a combination of words, symbols or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective viators into believing that the solicitation is in some manner connected with a government program or agency.

(14) An advertisement may state that a viatical settlement licensee is licensed in the state where the advertisement appears, provided it does not exaggerate that fact or suggest or imply that a competing viatical settlement licensee may not be so licensed. The advertisement may ask the audience to consult the licensee's web site or contact the department of insurance to find out if the state requires licensing and, if so, whether the viatical settlement provider or producer is licensed.

(15) An advertisement shall not create the impression that the viatical settlement provider, its financial condition or status, the payment of its claims, or the merits, desirability, or advisability of its viatical settlements are recommended or endorsed by any government entity.

(16) The name of the actual licensee shall be stated in all of its advertisements. An advertisement shall not use a trade name, any group designation, name of any affiliate or controlling entity of the licensee, service mark, slogan, symbol or other device in a manner that would have the capacity or tendency to mislead or deceive as to the true identity of the actual licensee or create the false impression that an affiliate or controlling entity would have any responsibility for the financial obligation of the licensee.

(17) An advertisement shall not directly or indirectly create the impression that any division or agency of the state or of the U.S. government endorses, approves or favors:



(a) any viatical settlement licensee or its business practices or methods of operations;

(b) the merits, desirability or advisability of any viatical settlement;

(c) any viatical settlement; or

(d) any life insurance policy or life insurance insurer.

(18) If the advertisement emphasizes the speed with which the viatication will occur, the advertising must disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator.

(19) If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase price as a percent of face value obtained by viators contracting with the licensee during the past six months.

#### **R590-222-12. Reporting of Fraud.**

(1) A person engaged in the business of viatical settlements under Title 31A, Chapter 36, that knows or has reasonable cause to believe that any person has violated or will violate any provision of Section 31A-36-113, shall, upon acquiring the knowledge, promptly notify the commissioner and provide the commissioner with a complete and accurate statement of all of the relevant facts and circumstances. Any other person acquiring such knowledge may furnish the information to the commissioner in the same manner. The report is a protected communication and when made without actual malice does not subject the person making the report to any liability whatsoever. The commissioner may suspend, revoke, or refuse to renew the license of any person who fails to comply with this section.

#### **R590-222-13. Prohibited Practices.**

(1) A viatical settlement provider or producer shall obtain from a person that is provided with patient identifying information a signed affirmation that the person or entity will not further divulge the information without procuring the express, written consent of the insured for the disclosure. Notwithstanding the foregoing, if a viatical settlement provider or producer is served with a subpoena and, therefore, compelled to produce records containing patient identifying information, it shall notify the viator and the insured in writing at their last known addresses within five business days after receiving notice of the subpoena.

(2) A viatical settlement provider shall not also act as a viatical settlement producer in the same viatical settlement, whether entitled to collect a fee directly or indirectly.

(3) A viatical settlement producer shall not seek or obtain any compensation from the viator without the written agreement of the viator obtained prior to performing any services in connection with a viatical settlement.

(4) A viatical settlement provider or producer shall not unfairly discriminate in the making or soliciting of viatical settlements, or discriminate between viators with dependents and without dependents.

(5) A viatical settlement provider or producer shall not pay or offer to pay any finder's fee, commission or other compensation to any insured's physician, or to an attorney, accountant or other person providing medical, legal or financial planning services to the viator, or to any other person acting as an agent of the viator, other than a viatical settlement producer, with respect to the viatical settlement.

**R590-222-14. Filing of Forms.**

(1) All forms to be used for a viatical settlement shall be filed with the commissioner prior to use. The department is not required to review each form and does not provide approval for a filing. The forms will be identified as "filed for use" when submitted to the department with all requirements. The forms to be filed include the viatical settlement, disclosure to the viator, notice of intent to viaticate, verification of coverage, and application.

(2) A form filing consists of:

(a) a cover letter on the licensee's letterhead that provides the following:

(i) a list of the forms being filed by title and any identification number given the document;

(ii) a description of the filing; and

(iii) an indication whether the form:

(A) is new; or

(B) replacing or modifying a previously filed form; if so, describe the changes being made, the reason, and the date previously filed; and

(b) a copy of each form to be filed.

(3) The form filing and any responses must be submitted via email to [life.uid@utah.gov](mailto:life.uid@utah.gov).

(4) If a filing has been rejected, the filing must be resubmitted as a new filing.

(5) If a Filing Objection Letter has been issued, the response must include:

(a) a new cover letter identifying the changes made; and

(b) one copy of the revised document.

(6) Companies may request the status of their filing by email, telephone, or mail after 30 days from the date of submission.

**R590-222-15. Enforcement Date.**

The commissioner will begin enforcing the revised provisions of this rule 30 days from the rule's effective date.

**R590-222-16. Penalties.**

A person found, after an administrative proceeding, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

**R590-222-17. Severability.**

If any provision or clause of this rule or its application to any person or situation is held to be invalid, such invalidity may not affect any other provision or application of this rule which

can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

**KEY: insurance, viatical**

**Date of Enactment or Last Substantive Amendment: 2008**

**Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-36-119**